COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Petition of Cambridge Electric Light Company for Approval of a Rate S-2 Tariff Pursuant to G.L. c. 164, § 34A	)	D.T.E. 03-58

REPLY BRIEF OF CAMBRIDGE ELECTRIC LIGHT COMPANY

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I. INTRODUCTION

Cambridge Electric Light Company d/b/a NSTAR Electric ("NSTAR Electric" or the "Company") files this Reply Brief in the above-referenced proceeding. The Reply Brief responds generally to issues raised by the City of Cambridge (the "City") in its Initial Brief, filed with the Department of Telecommunications and Energy (the "Department") on September 23, 2003. As discussed herein, the City's Initial Brief includes several misconceptions about: (1) the provisions of G.L. c. 164, § 34A ("Section 34A") as they relate to the design of rates for customer-owned streetlights; (2) the Department's precedent regarding rate design, both generally and as applied in the context of customer-owned streetlight rates; and (3) the assumptions used by the Company in designing its proposed Rate S-2. Although the Company will not respond to each of the City's numerous, yet inapt, factual and legal claims, the Company's silence as to any matter raised in the City's Initial Brief should not be construed as acquiescence to any specific position taken. The Company responds, instead, to the City's general arguments, in turn.

II. THE DEPARTMENT SHOULD REJECT THE CLAIMS RAISED BY THE CITY IN ITS INITIAL BRIEF BECAUSE SUCH CLAIMS ARE EITHER UNSUPPORTED BY THE RECORD IN THIS PROCEEDING OR BASED ON A MISAPPLICATION OF THE LAW.

A. The Restructuring Act Does Not Mandate That Distribution Companies Design Customer-Owned Streetlight Tariffs in a Manner Different From Their Remaining Tariffs.

The City claims in its Initial Brief that "[t]he alternative streetlight tariff contemplated by [Section 34A] is a limited tariff for a limited distribution service" (City Initial Brief at 1). However, the City fails to support this claim with any compelling legal argument, or citation to Department precedent. The City correctly cites the provisions of Section 34A as they relate to authorizing distribution companies to design tariffs specifically for municipal customers that choose to purchase a distribution company's streetlights, i.e., at the option of a municipality, such municipality may:

> convert its street lighting service from the subject tariff to an alternative tariff approved by the [D]epartment providing for delivery service by the electric company of electric energy, whether supplied by the electric company or any other person, over distribution facilities and wires owned by the electric company to lighting equipment owned or leased by the municipality…

G.L. c. 164, § 34A(a)(i).

However, nowhere in Section 34A, or anywhere else in the Electric Restructuring Act of 1997 (the "Act"), from which Section 34A emanates, are there provisions directing distribution companies to design customer-owned streetlighting rates in a manner different from other distribution rates. Nor is there any requirement to design such streetlighting rates in a particular manner with respect to customer charges, per-fixture charges and consumption charges. The only distinction between the design of a customer-owned streetlighting rate and other rates that can be properly derived from the language of Section 34A is that a distribution company should design its customer-owned

streetlighting rate so that the costs of the streetlighting facilities to be purchased by a customer are removed from the costs of delivering electricity to such facilities. The Company has demonstrated throughout this proceeding that, in designing its proposed Rate S-2, it has properly removed the costs relating to its streetlighting facilities from its approved Rate S-1, based on the marginal costs associated with such facilities, including carrying charges relating to the investment costs of the facilities themselves, including the luminaire, brackets, photo cells, as well as costs to install and remove the facilities (Exh. CAM-DTE-1-2(c), at page 5 (labeled Exhibit 1A); Exh. DTE-1-3 (a)), and the maintenance costs relating to the streetlight fixtures (Exh. CAM-DTE-1-2(c), at page 6 (labeled Exhibit 1B); Exh. DTE-1-3(b)).

As a result, the Department's general precedent for rate design relative to the recovery of embedded costs, use of marginal cost pricing signals, and concepts of efficiency, simplicity, continuity and fairness applies. The City does not cite to any precedent that contradicts this governing rate-design methodology. To the contrary, the Company has cited long-standing Department precedent that is consistent with the Company's proposed rate design. See Boston Gas Company, D.P.U. 96-50 (Phase I) at 133-136; Boston Gas Company, D.P.U. 93-60, at 331-332; Cambridge Electric Light Company, D.P.U. 92-250, at 163. Accordingly, the Department should reject the City's attempt to persuade the Department into creating a new rate design protocol that ignores cost-recovery principles for distribution companies that seek to comply with the requirements of Section 34A.

B. The Customer Charge Reflected in the Company's Proposed Rate S-2 Is Based on the Company's Department-Approved Rate S-1 Tariff and Is Just and Reasonable.

The City takes issue with the Customer Charge proposed by the Company in its Rate S-2 tariff, claiming that it is not "just and reasonable" because it is different from the Customer Charge approved by the Department reflected in Boston Edison Company's Rate S-2 tariff (City Initial Brief at 2-3).[1] However, as stated several times by the Company in this proceeding, the City's attempt to compare the Company's proposed Rate S-2 and the Rate S-2 of Boston Edison is like comparing apples to oranges.

First and foremost, the City's continued attempts to cite inapplicable precedent to this proceeding must be rejected by the Department. In its Initial Brief, the City acknowledges, but then ignores the fact, that the Department's order in Boston Edison Company, D.T.E. 98-108 (1999) merely approved a settlement of issues in that proceeding regarding the propriety of Boston Edison's then-proposed Rate S-2 tariff. The Department noted in its D.T.E. 98-108 order that its "acceptance of the Joint Motion [of settlement] does not constitute a determination or finding on the merits of any allegations, contentions, or arguments made in this investigation and should not be interpreted as establishing precedent for future filings whether ultimately settled or adjudicated." D.T.E. 98-108, at 6 (1999). This language is an explicit recognition by the Department that the tariff approved in that proceeding was based, not on rate design

[1] Specifically, the City makes the related claims that "[t]he Customer Charge per light proposed in this proceeding is neither just nor reasonable" (City Initial Brief at 2) and "[i]n order to approve the requested Customer Charge per light…, it would be incumbent on the Company to demonstrate that the requested Customer Charge is designed to recover costs that are different from the cost recovery initial requested but excluded from the [Section 34A] rate approved in DTE 98-108" (City Initial Brief at 3). The Company replies to each of these arguments in Section II.B, infra.

principles *per se*, but rather on Boston Edison's decision at that time to structure its Rate S-2 tariff in the manner ultimately presented to the Department for approval.

Moreover, even if the Department were to ignore its directives in D.T.E. 98-108 and look to Boston Edison's Rate S-2 for guidance in this proceeding, the Customer Charge methodology included in Boston Edison's Rate S-2 tariff is based on its historical methodology for recovering customer charges for customer-owned streetlights. Mr. LaMontagne noted during this proceeding that Boston Edison's Rate S-2 was formulated originally to serve individual customers owning an individual light, i.e., individually metered streetlights (Tr. 1, at 10). Its application to a municipal customer owning multiple lights was agreed to as part of a settlement, not as a result of an adjudicatory proceeding where the cost basis for such a methodology was established. In fact, as acknowledged by the City, Boston Edison's initial filing in that proceeding included a proposed Rate S-2 tariff with unbundled rates, with individual prices by size and type, similar to the Company's proposal in this proceeding (see City Initial Brief at 3).[2] Accordingly, the Department should reject the City's attempt to compare the Company's rate design methodology to Boston Edison's Rate S-2, both on legal and factual grounds.

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[2] The City asks rhetorically in its Initial Brief, "[i]f we are dealing with the same categories of expenses in both of these [Section 34A] proceedings (referring to D.T.E. 98-108), as the Company has now admitted, how can these dramatically different levels of cost recovery…both be deemed to be just and reasonable and both be deemed to be consistent with the Act?" (City Initial Brief at 4). The answer to that question is, as described above, that the Company and Boston Edison are two different companies with their own unique cost structure and rate recovery mechanisms. The Department does not require different distribution companies to mirror each other's rate design methodologies, because the Department recognizes that its rate design goals of: (1) efficiency; (2) simplicity; (3) continuity; (4) fairness; and (5) earnings stability can be achieved using different rate design methodologies, depending on the cost and rate structure of each individual company See Incentive Regulation, D.P.U. 94-158, at 5 (1995) ("…the form and method of regulation by public utilities is not fixed by statute"). The bottom line is that two different companies can have different, even significantly different, rates, and still each have "just and reasonable" rates consistent with G.L. c. 164, § 94.

C. The Department Should Reject the City's Mischaracterization of the Costs Included for Recovery Through the Company's Proposed Customer Charge.

The City makes several claims in its Initial Brief that the Company's proposed Customer Charges in its Rate S-2 include costs for services that are "not the responsibility of the Company following a [Section 34A] streetlight purchase" (City Initial Brief at 4 through 12). The Company addressed the City's general contention regarding the nature of the costs reflected in the Company's Customer Charge in response to Record Request City-3. In that exhibit, the Company noted that its Customer Charge recovers costs relating to billing, customer service and other administrative costs as reflected in the following Federal Energy Regulatory Commission ("FERC") Customer Account Expense (Accts. 901-905), Customer Service & Information (Accts. 907-910) and Sales Expense (Accts. 911-916) (RR-City-3; Tr. 1, at 21). Although the City contends that these accounts are "not particularly useful" in determining the nature of the streetlight costs reflected in the Company's Customer Charge (City Initial Brief at 4), the fact is that these accounts reflect such costs, which has been demonstrated by the Company in this proceeding.

Moreover, the City's argument that it should not be responsible for paying certain customer service costs for streetlight-related services that are "not the responsibility of the Company" (City Initial Brief at 4) implies that it should be able to avoid costs for services which it may not choose to take. However, regardless of whether the City believes, at this time, that it will choose to partake of certain customer services (e.g., streetlight interconnection services), the Company must nonetheless incur costs to have these services available if a customer, such as the City, determines that it wishes to utilize these services at some point in the future (Tr. 1, at 32). Accordingly, the Company's

Customer Charge properly includes costs for services that will continue to be available to municipal customers that may choose to utilize such services.

In addition, the City makes several unsubstantiated arguments regarding the nature of the costs proposed to be recovered in the Company's proposed Rate S-2 and those reflected in a draft License Agreement offered to the City in the context of the Company's negotiations with the City to purchase streetlights from the Company (City Initial Brief at 6-13).[3] In order to assuage the concerns of the City, the Company noted in response to Record Request City-3 that the nature of the work subject to fees and charges under the draft License Agreement are field survey; inspection; make-ready work; removal of streetlight equipment; pole replacements, rearrangements and changes; and any other work performed by the Company at the request of the City, costs which are not reflected in the FERC accounts referenced previously (RR-City-3). Allegations of double collecting are, thus, incorrect. Moreover, the provisions of the draft License Agreement are not relevant because the Company's proposed Rate S-2, and not the draft License Agreement, is at issue in this proceeding. Accordingly, the Company has demonstrated the nature of its costs reflected in its proposed Rate S-2 and the Department should ignore the City's unsubstantiated arguments regarding this issue.

[3] The City also improperly references a proposed Purchase and Sale Agreement ("PSA") offered to the City by the Company, but which has not been introduced in this proceeding. The City may not refer to facts not in evidence in this proceeding to support its arguments. Accordingly, the Company moves to strike those portions of the City's Initial Brief describing or relating to the draft PSA referenced by the City. In the alternative, the Company requests that the Department give no weight to any of the provisions referencing the draft PSA in evaluating the Company's proposed Rate S-2 tariff.

D. The Department Should Reject the City's Assertions Regarding the Company's Revenue Requirement as it Relates to its Proposed Rate S-2.

In what is perhaps the most confusing argument constructed by the City, the City contends that "[t]he Company has not supported its proposed tariff as providing the revenue requirement allowed by the cost of service study" (City Initial Brief at 13). The City attempts to support this odd contention by incorrectly characterizing the Department's precedent in D.T.E. 98-108, Massachusetts Electric Company, D.T.E. 98-69, and the record in this proceeding.

The City initially makes the following argument to support its contentions regarding the Company's revenue requirement:

> The section 34A distribution rates approved by the department in DTE 98-108 and DTE 98-69 were both based on recovering the compliance distribution revenue requirements included in the underlying cost of service studies and /or underlying rates. In DTE 98-69 the cost of service study was introduced as an exhibit. In DTE 98-108 the cost of service compliance distribution revenue requirement was implicit in the ruling, because the pre-existing *distribution rate* in the pre-existing S2 Tariff was approved, which in turn was based on the pre-existing compliance distribution revenue requirement. In this proceeding, the Company is proposing to depart from the practice in these earlier section 34A proceedings of basing their proposed section 34A tariff on the compliance distribution revenue requirement in the underlying cost of service studies.

City Initial Brief at 13.

To respond to the City's last argument first, the Company in this proceeding is, indeed, proposing to base its proposed Rate S-2 tariff on the costs necessary to recover its approved revenue requirement, as reflected in D.P.U. 92-250. The Company's methodology of starting with its approved Rate S-1, which is designed to recover the costs relating to the Company's revenue requirement, ensures that the Company recovers such costs through its proposed Rate S-2, minus the Specific Facilities Charges relating to

the streetlight fixtures to be purchased by a municipal customer (see Company Initial Brief at 4-5, citing Exhs. CAM-HCL-2 and CAM-HCL-3).

Moreover, unlike Massachusetts Electric Company in D.T.E. 98-69, the Company is not proposing to design its Rate S-2 in a manner that would collect *additional* costs. See D.T.E. 98-69, at 12. Contrary to the City's assertion that "in the MECo case, the tariff was based on the revenue requirement" (City Initial Brief at 13), MECo attempted in that case to set its revenue requirement for its proposed Rate S-5 at $25.5 million, which, although at a level representing its fully allocated costs to serve its streetlighting class, was almost $7 million above the revenue requirement that Massachusetts Electric had previously agreed to recover from its streetlighting customers in its restructuring settlement. In comparison, the Company has demonstrated in this proceeding that its Rate S-1, on which the proposed rate S-2 is based, is a subsidized rate class with over $280,000 of the costs to serve Rate S-1 allocated to other rate classes (see Exh. CAM-DTE-1-2(a)(Att.) at Schedule 4, Column 5). The Company is not proposing in this proceeding to alter that subsidy in any way as it relates to its proposed Rate S-2. Accordingly, although the City fails to acknowledge it, it is far better off under the Company's proposed Rate S-2 than it would have been under the rate design methodology proposed by Massachusetts Electric in D.T.E. 98-69.[4]

In addition, although, as demonstrated above, the City's premise regarding the Company's revenue requirement is off-base conceptually, its characterization of the record in this proceeding to support its contentions is also blatantly incorrect. The City

[4] That is not to say that Massachusetts Electric was incorrect in proposing to recovery its fully allocated costs to serve customers under its proposed Rate S-5. However, the City's apparent desire to have the Company adopt the same methodology in this proceeding is puzzling, to say the least.

makes the following conclusions regarding the Company's evidence in this proceeding, which are not supported by the evidence itself:

- **City Premise 1 (City Initial Brief at 14)**

  In Exhibit DTE 1-1(b) the Company itemizes its request for $641,120 of delivery revenue, which the Company has explained is not the distribution revenue requirement. Exhibit DTE 1-1 (c) purports to explain the revenue requirement. But the only portion of this exhibit dealing with the compliance revenue requirement is on page 1 of that exhibit on line 4:

  > At page 1 of DTE1-1 (c) the Company provides the following figures:
  >
  > Line 4 1,685,109 (Revenue Sought) and 1,369,838 (compliance revenue)

  The implication appears to be that 81% of the streetlight revenue sought was actually allowed as compliance revenue. The only portion of this Company Exhibit that relates directly to distribution revenue is shown in Lines 32 through 36.

  (City Initial Brief at 14).

⇒ **Company Response**

This last statement is factually incorrect. Exh. CAM-DTE-1-1 (c), lines 14 through 26, show a summary of the total revenue requirement split between the streetlighting facilities function and the delivery function. The streetlighting operation and maintenance ("O&M") expenses are then further split to account for continuing functions. Moreover, as explained above, the Rate S-2 as proposed is designed to collect the proper revenue level in accordance with D.P.U. 92-250.

- **City Premise 2 (City Initial Brief at 14)**

  The numbers on these lines, which are reproduced below, are represented as subcategories of the $1,685,109 of total revenue sought, (not as subcategories of the 1,389,838 (sic) in compliance revenue)…

⇒ **Company Response**

The difference between the $1,685,109 reflected in line 26 and the $1,369,838 referenced by the City as "compliance revenue" is that the Company's O&M numbers referenced by the City on lines 33-36 were adjusted downward in lines 1-4 of Exh. CAM-DTE-1-1(c) to reflect the rate of return for the Company approved by the Department.

- **City Premise 3 (City Initial Brief at 14-15**

  The first two numbers in the above column represent $139,722 in distribution costs, which amount specifically excludes the streetlight maintenance cost in the bottom two numbers. The Company has indicated in Exhibit CAM-DTE-1-1(d) [page] 39-4 in line 26 that the total service in Cambridge at the time of the cost of service study represented 6,232,495 kwh of streetlight service. If you spread the $139,722 in distribution revenue sought, over these 6,232,495 kwh, of distribution service, you arrive at a cost of 2.24 cents per kwh. It is worth noting that Company has also represented in Exhibit CAM-HCL-4 on page 2, column 4 on the last line, that the total kilowatt hours of streetlight service today has declined to 6,199,904 kilowatt hours of service.

⇒ **Company Response**

The City's statements above are a complete misinterpretation of the Company's cost-of-service study. The four accounts cited in the City's Initial Brief are all specifically streetlight-related and not distribution-delivery-related and thus have been removed from the total revenue requirement. The City is calculating a theoretical delivery rate based on non-distribution delivery costs.

- **City Premise 4 (City Initial Brief at 15)**

  All of the Company's numbers itemized at the bottom of DTE 1-1 (c) are based on *revenue sought* as opposed to compliance revenue. If you arbitrarily applied the 81% factor implicit from line four of the same exhibit, this would suggest a distribution revenue requirement of $139,722 times 81% or $113,174 or 1.815 cents per kwh.

⇒ **Company Response**

Other than the mathematical exercise offered by the City, these statements are factually incorrect. The revenue requirement reduction stems predominantly from applying a lower return on equity as noted previously. A total of $264,335 was removed from the streetlight revenue requirement.

- **City Premise 5 (City Initial Brief at 15)**

> The Company was unable to identify the dollar amount of the distribution revenue requirement at the hearing. We can find no reference to a distribution revenue requirement anywhere in the several hundred pages of company exhibits. If the Company is unable to identify the distribution revenue requirement in the underlying S1 tariff, on what basis can the Company claim that the procedure used establishes a rate that is less than the rate that would be established following the DTE 98-69 procedure.

⇒ **Company Response**

Exh. CAM-DTE-1-1(c), which includes the sub-heading "Revenue Requirements Analysis," details the distribution revenue requirement for the Company.

In addition to the above factual errors, the City continues on pages 15-16 of its Initial Brief to make the false comparison between the Company's proposed Rate S-2 and the rates of other companies, in this instance, the MECo Rate S-5. For the reasons stated above, the Department should reject the City's analysis regarding the Company's revenue requirement.

III. CONCLUSION

The City's goal in this proceeding, understandably, is to minimize its costs for streetlighting services. To that end, the City has pointed to the rates of other distribution companies, without adequate support, in asking the Department to direct the Company to

design its proposed Rate S-2 to appear, both in format[5] and price, similar to that of other distribution companies.[6] However, the Company has demonstrated that its methodology for designing its proposed Rate S-2 tariff is consistent with Section 34A and approved ratemaking practices; it cannot be compared directly with the rates of other distribution companies because both the costs of those companies, and the circumstances under which their customer-owned streetlighting tariffs were approved, are different from those of the Company. Accordingly, the Company requests that the Department approve its proposed Rate S-2 tariff.

Respectfully submitted,

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[5] The City even challenged the Company's proposed tariff offered in response to Record Request City-4 that attempted to simplify even further the structure of a customer-owned streetlighting rate (City Initial Brief at 16-17).

[6] The City's argument that a lower cent per kilowatthour charge for the Company's proposed Rate S-2 would be better because other utilities have lower charges is meaningless (see City Initial Brief at 16). Such an argument has no relevance as to whether the Company's design is consistent with Department precedent. In addition, in citing the customer-owned streetlighting rates of other companies that the City finds more appealing, the City conveniently ignores the customer-owned streetlighting rate of Commonwealth Electric Company, which is designed in a manner similar to that of the Company.